

MUFTI SIRAJ DESAI SAHEB ANSWERS QUESTIONS ON PROPOSED MMB

I am assuming these questions are with reference to the proposed Muslim Marriages Bill (referred to hereafter as the MMB). I have, therefore, provided the answers accordingly.

1. If a husband is abusing his wife physically, or he does not provide needed expenses in spite of being able to do so, or he ill-treats her by verbal and mental abuse, then the Ulema will instruct him to desist from all this abuse or give the talaaq. If he refuses then the Ulema have the right to annul the marriage. They can enforce this annulment with a court order, if need be. Ulema have annulled many marriages for the above and other reasons, and there was no need to seek a court order. So far the Ulema/Muftis have enjoyed this much authority among spouses.

2. As far as maintenance after talaaq is concerned it must be remembered that a wife is only entitled to maintenance for the duration of her iddat, not after. Therefore, with regard to maintenance after talaaq, the Ulema have encountered the following scenarios.

2.1 The wife is a working woman who leaves home to earn a living. In that case, she is not entitled to any expenses during the iddat because by leaving home she has violated the primary condition of iddat. Will the MMB provide for this Shar'ee requirement?

2.2 If it is argued that she had to work because the husband is not supporting her or is unable to support her, then why is she even concerned with maintenance in iddat when she was working even during the subsistence of the nikah?

2.3 If she is a housewife, then indeed the husband is obligated to give her expenses during the iddat, as he was doing before the talaaq. However, if the nikah was annulled because the husband was not providing adequate expenses for her, then it is futile to expect him to provide for her during the iddat, as it is unreasonable to expect the Mufti or the Ulema body to extract the expenses from him for this period.

2.4 If he was providing for her during the nikah and then he divorced her, or the nikah was annulled for reasons other than failure to provide expenses,

then in our experience we seldom find husbands who have refused to support wife during the iddat as well. They continue financial support for the duration of iddat as well.

2.5 Indeed, there are rare cases where husbands are so obstinate and nasty that they terminate all financial support after talaaq. In this case, the Ulema will advise him of his obligations but cannot force him to abide by their ruling.

2.6 In the above scenario, the wife can petition the court to compel the husband to provide maintenance for the iddat duration. But this is not recognised by the courts. The attorneys will press for alimony (financial support from the husband for life), which is totally in conflict with Islam and is totally haraam. If the court agrees to award the wife maintenance during the iddat only (which is unlikely) then that is well and good. If than be achieved (just as child maintenance is achievable) even without a MMB, then what is the need to fight for a MMB in the first place?

2.7 If there are children in the marriage, then for decades now (long before the question of a Muslim Marriage Bill had arisen) Muslim mothers have succeeded in getting court orders that compel the husband to provide maintenance to children according to his earnings. Here too, even in the absence of the MMB, this basic right is still achievable. In fact, according to some experts, with a MMB in place, the process for this can be more complicated and drawn out. Allah knows best.

3. With regards to custody of children, even in the absence of the MMB, for decades now custody matters have been facilitated mainly by the intervention of the Ulema. Where the husband has failed to co-operate with the Ulema and has assumed unjust custody of children, women have used the Family Advocate to get joint or full custody. Notwithstanding this, the questioner is not taking into account the flip-side: where wives have taken full custody of children with court intervention, and have refused to grant custody to the father even after the ages that are stipulated by Shariah. Does marital rights only apply to the one spouse and not the other? We have dealt with cases where the wife was guilty of keeping the children away from the father entirely, even after courts have granted joint custody. The solution to these problems lies not in the MMB, rather in alignment with Islamic values and development of Islamic character.

4. It is the Islamic duty of a wife to look after the household and her children. Does she expect to get paid for this? Will a Muslim Marriage Bill award a wife “her shariah share” for being a typical housewife?

5. As regards the wife contributing towards buying a house, indeed, she is entitled to get back whatever she has contributed if ever the marriage is terminated. But which court will be able to accurately award the wife the exact amount that she contributed towards the house? Instead, the secular court will decide on the basis of a Community of Property agreement, which will afford the wife far more than what she is entitled to. Will that be fair? In Shariah, the amount she contributed will be a loan to the husband who is obliged to pay her back. One solution here is to register the house on both spouses names, but will it be fair for the wife to own 50% of the house when she contributed perhaps only 40% of the total amount? However, if the husband is happy with this, then according to Shariah it is acceptable. The danger is that a MMB based on kuffar law will award the wife far more than what she is entitled to.

6. Can the questioner please define what is the Shariah share he or she is referring to in this context? Has the Shariah fixed a specific share for the wife after divorce? If so, please provide some Shar’ee evidence for this. Can the MMB quantify a wife’s share of the household after divorce takes place? Unless the divorcee wants to opt for a division of assets based on kuffar law. So, is this a Shar’ee concept or a “shariah share”? Do we wish to clothe haraam with the garb of Shariah?

Right now, without a MMB, Muslim, women who receive alimony or who succeed in winning a large chunk of the ex-husband’s assets after divorce, do so while knowing it is haraam.

Enter the MMB and the same will happen but under the guise of a “Shariah Bill”.

Now the haraam has been cloaked in a Shariah get-up. This makes the sin worse.

Allah Ta’ala knows best

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Sign the petition in opposition to the bill and it's supporters:

<http://chnng.it/5QKgWtjc>

Hadhrat Mufti Saheb is a senior Aalim of South Africa and a founding member of the #WifaqulUlamaofSouthAfrica